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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,989	09/12/2003	Jerry W. Rodgers	POW5381.01A2	6096
8156	7590	12/14/2005	EXAMINER	
JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814			BRADEN, SHAWN M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

THH

<b>Office Action Summary</b>	<b>Application No.</b> 10/660,989	<b>Applicant(s)</b> RODGERS ET AL.	
	<b>Examiner</b> Shawn M. Braden	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-17 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8, 12-14, 18, 19, 21-23, 26-28, 32-34 and 727 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9-11, 24, 25 and 29-31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/02/2004</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 6,19,26 contains the trademark/trade name BARRACADE. Claims 14,18,34 contains the trademark/trade name THERMOLAG 3000. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe fire resistant materials and, accordingly, the identification/description is indefinite.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3727

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3,7,8,13,14,21-23,27,28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohm (USPN 6,520,104) in view of McGarvey (USPN 4,989,750) and Dodson (USPN 5,960,981). Bohm clearly shows a base tank for storing flammable and combustible liquids and supporting a generator (fig 1), Bohm also shows an interstitial space defined between the walls of the outer tank and the inner tank (fig 5).

Bohm lacks a plurality of planar baffles coupling opposing side walls, Bohm also lacks fire resistant material disposed on the outside of outer tank, Bohm also lacks a fire resistant solution disposed in the interstitial space.

Dodson teaches a tank baffle aiding in the structural strength of a vehicle tank. McGarvey teaches fire resistant material disposed on the outside of outer tank to improve safety 243. McGarvey also teaches fire resistant solution disposed in the interstitial space for improved safety 221a,221b,221c. Fire resistant solution is injected in liquid form.

Therefore it would have been obvious to one of ordinary skill at the time of the invention was made to add baffles to Bohm's tank to in order to increase structural strength. Also, it would have been obvious to one of ordinary skill at the time of the invention was made to add fire resistant material on the outside of outer tank and to add fire resistant solution in the interstitial space to lower the risk of fire or an explosion.

4. With respect to claims 2,3,22,23 McGarvey discloses steel walls that are about 10 gauge (1/8-1/4 in thick) (Col 2 In 60-65). That would include inner tank wall of at

Art Unit: 3727

least about ¼ inch and an outer wall thickness of at least about ¼ inch. In regards to the 316 stainless steel.

It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

It was well known in the art that 316 stainless steel has good corrosion resistance, workability and great strength. Therefore it would have been obvious to one of ordinary skill at the time of the invention was made to modify Bohm's tank with the stainless steel walls of McGarvey in order to have a strong corrosion resistant tank.

5. Regarding claims 7 and 27, McGarvey claims a tank wall of at least about 2 inches (col10 ln55). This would be included in the range of about 2 inches or less and also about 4 inches or less.

6. Regarding claims 8 and 28, Bohm discloses the claimed invention except for the specific interstitial space adjoining said sidewalls of said inner tank and adjoining said bottom wall of said inner tank is about 1 inch. It would have been an obvious matter of design choice to make this space 1 inch, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Further more the applicants disclosure fails to show how this dimension is critical or how this dimension show new or unexpected results over the prior art.

7. Regarding claims 13 and 33, McGarvey teaches glass fiber walls, are reinforced walls, resin impregnated. He teaches fiberglass walls for lightweight tank construction (col2 ln60-64). Therefore it would have been obvious to one of ordinary skill in the art at

Art Unit: 3727

the time of the invention to add a fiber glass mesh coated with an intumescent paint to Bohm's tank to lower the overall weight of the container in order to improve portability.

8. Regarding claim 14, McGarvey teaches fire resistant material disposed on the outside of outer tank to improve safety. Examiner views this material same as THERMOLAG 3000.

9. Claims 12,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohm, McGarvey and Dodson as applied to claim 1 above, and further in view of Neuscheler (USPN 3,995,168). Bohm as applied in claim one teaches everything except a water detector. Neuscheler teaches a devise to provide a warning signal when an unexpected fluid is present in the tank thereby protecting against situation where water is inadvertently placed or accumulates above a normal amount in an engine fuel tank (col1 ln58-63). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to add a water detector such as Neuscheler to Bohm's tank in order to avoid running water contaminated fuel in the accompanying engine.

10.

***Allowable Subject Matter***

11. Claims 4-6,9-11,24-26,29-31 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 15-17 and 20 are allowed.

Art Unit: 3727

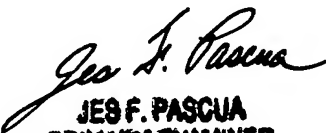
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMB

  
**JES F. PASCUA**  
**PRIMARY EXAMINER**